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**IN THE
COURT OF APPEALS OF INDIANA**

STATE OF INDIANA,)	
)	
Appellant-Plaintiff,)	
)	
vs.)	No. 49A04-0607-CR-360
)	
LINDEN CORNEWELL,)	
)	
Appellee-Defendant.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton-Pratt, Judge
Cause No. 49G01-0402-MR-017465

JUNE 5, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Plaintiff-Appellant State of Indiana appeals the trial court's grant of Defendant-Appellee Linden Cornewell's motion to suppress in this interlocutory appeal.

We affirm.

ISSUE

The State presents one issue for our review which we restate as: whether the trial court erred by granting Cornewell's motion to suppress his statements.

FACTS AND PROCEDURAL HISTORY

While on patrol in January 2004, Officer Prater with the Indianapolis Police Department saw Lonnie Hall walking down an Indianapolis street. Knowing Hall to be a suspect in a murder case, Officer Prater stopped him, as well as the man he was with, later identified as Cornewell, at approximately 3:44 p.m. Officer Prater had the men put their hands on his vehicle, and Detective Beavers, who had arrived on the scene, performed a pat-down search of the two men. After advising the men that he needed to talk to them, Detective Beavers put the men in handcuffs, and they were transported to the police headquarters. Although Cornewell was not a suspect in the case, the police took him to the police department for questioning along with Hall. At police headquarters, Cornewell's handcuffs were removed, and he was placed in a locked interview room. At approximately 4:45 p.m., Detective Tudor questioned Cornewell regarding Hall's involvement in the murder case. Cornewell was not advised of his *Miranda* rights at this time. Detective Tudor left the interview room at approximately 5:10 p.m., and re-entered about 15 minutes later to give Cornewell a soda. From approximately 5:56 p.m. to 6:14 p.m., Cornewell gave a taped statement regarding Hall's

whereabouts at the time of the murders and gave an address of Hall's cousin, Amy Ball, as the residence where the two men had been. When Cornewell completed his statement, Detective Tudor left police headquarters and drove to the address Cornewell had provided. Once there, Detective Tudor spoke with Ball, whose version of events the night of the murders contradicted Cornewell's. Ball agreed to go to the police department with Detective Tudor.

At approximately 7:38 p.m., Detective Tudor went back into the interview room with Cornewell and informed Cornewell that he had spoken with Ball and that their stories were conflicting regarding the night of the murders. Cornewell then replied, "[T]hey were alive inside the house when we left." Tr. at 32. Detective Tudor stopped Cornewell and told him not to say anything more. At approximately 7:51 p.m., Detective Tudor read Cornewell his *Miranda* rights in the presence of Detective Beavers and a third officer, and Cornewell signed a waiver of rights form. Following his waiver of rights, Cornewell gave a second taped statement that lasted approximately 30 minutes.

Cornewell was charged with two counts of murder, two counts of felony murder, two counts of armed robbery, two counts of armed confinement, and one count of burglary. He filed a motion to suppress his statements, and, following a hearing, the trial court granted his motion upon finding that his statements were the result of an illegal arrest which warranted their suppression. It is from this order that the State has filed an interlocutory appeal.

DISCUSSION AND DECISION

The State's sole contention on appeal is that the trial court erred by granting Cornewell's motion to suppress the evidence obtained pursuant to Cornewell's arrest. The State has the burden of demonstrating that the measures it used to seize the information or evidence were constitutional. *State v. Davis*, 770 N.E.2d 338, 340 (Ind. Ct. App. 2002). When appealing the grant of a motion to suppress, the State appeals from a negative judgment and must show the trial court's ruling was contrary to law. *State v. Estep*, 753 N.E.2d 22, 24 (Ind. Ct. App. 2001). This Court will reverse a negative judgment only when the evidence is without conflict and all reasonable inferences lead to a conclusion opposite that reached by the trial court. *Id.* We neither reweigh the evidence nor judge the credibility of the witnesses, and we consider only the evidence most favorable to the judgment. *Id.*

Generally, a confession obtained through custodial interrogation after an illegal arrest is inadmissible. *Brown v. State*, 503 N.E.2d 405, 407 (Ind. 1987), *habeas corpus denied by* 2006 WL 3136566 (2006). However, such a confession may be admitted at trial if intervening events break the causal connection between the illegal arrest and the confession such that the confession is an act of free will sufficient to purge the original taint. *Id.* The State has the burden of showing that the confession is admissible. *Reid v. State*, 444 N.E.2d 1247, 1249 (Ind. Ct. App. 1983).

Assessing the admissibility of such a confession requires consideration of the Fifth Amendment right against self-incrimination, as well as the Fourth Amendment right against unreasonable seizures. *Brown*, 503 N.E.2d at 407. The threshold requirement is

that the confession be voluntary under the Fifth Amendment. *Snellgrove v. State*, 569 N.E.2d 337, 342 (Ind. 1991) (citing *Brown v. Illinois*, 422 U.S. 590, 604, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975)). Here, Cornewell does not challenge the voluntariness of his confession on Fifth Amendment grounds.

Next, we examine Cornewell's confession pursuant to the principles of the Fourth Amendment by examining the facts of the case within the framework of certain factors. Following the teachings of the United States Supreme Court, our supreme court has noted three factors to consider in determining whether a confession is the product of the illegal action or whether the confession has been obtained by means sufficiently distinguishable to be purged of the original taint. The factors are: (1) the temporal proximity of the arrest and the confession, (2) the presence of intervening circumstances and, (3) the purpose and flagrancy of the official misconduct. *Brown*, 503 N.E.2d at 408 (citing *Brown*, 422 U.S. at 603-04). The *Miranda* warnings are an important factor, also, and are to be considered with the other factors. *Snellgrove*, 569 N.E.2d at 341-42 (citing *Brown*, 422 U.S. at 603).

As to the issue of temporal proximity, Cornewell gave his first statement approximately one hour after he was arrested, and his confession occurred approximately three hours after he was initially stopped with Hall by Officer Prater. Our supreme court has noted the difficulty of assessing this particular factor. See *Snellgrove*, 569 N.E.2d at 342 (discussing the ambiguity involved in the temporal proximity factor and citing *Taylor v. Alabama*, 457 U.S. 687, 102 S.Ct. 2664, 73 L.Ed.2d 314 (1982) where time span of six hours between arrest and confession was found to be insufficient to purge original taint

and *Rawlings v. Kentucky*, 448 U.S. 98, 100 S.Ct. 2556, 65 L.Ed.2d 633 (1980) where only 45 minutes between arrest and confession was determined to be sufficient to purge the taint). Nonetheless, we note here that Cornewell's first statement was separated from his illegal arrest by only one hour and there was no intervening event. Further, Cornewell's second statement was clearly the result and the fruit of the first one. This is so because, in his first statement, Cornewell provided Ball's name and address. Detective Tudor took that information and went to Ball's house. When her version of events differed from that of Cornewell, Detective Tudor returned to police headquarters with Ball to confront Cornewell about the veracity of his earlier statement. It was at this point that Cornewell admitted his part in the murders.

In this case, the materials on appeal, including the transcript of the suppression hearing, do not disclose the presence of intervening circumstances. "Intervening circumstances have been found to exist where the arrestee is taken before a magistrate, released from custody, or has consultations with an attorney." *Snellgrove*, 569 N.E.2d at 342 (*citing* LaFave, Search and Seizure § 11.4(b), at 398 (2d ed. 1987)). After his arrest, Cornewell was taken to police headquarters and placed in a locked interview room. From the time he was placed in the interview room between 3:44 p.m. and 4:45 p.m. and when he completed his taped confession at 9:07 p.m., Cornewell never left the locked room and spoke only with police officers. *But see Reid*, 444 N.E.2d at 1249 (determining that confession was purged of primary taint by intervening circumstances of Reid's arrest on three outstanding warrants and her private conversation with her sister); *see also Brown*, 503 N.E.2d at 408 (affirming trial court's conclusion that Brown's private discussion

with his father after his arrest and his request to speak to an officer purged taint of illegal arrest from confession).

We turn next to the third factor of the purpose and flagrancy of the official misconduct. The purpose of stopping Cornewell was to elicit information about Hall and his involvement in the murders the police were investigating. Officer Prater and Detective Beavers testified that they had no information on Cornewell and had never heard of Cornewell before the day he was stopped with Hall. Yet, the officers gave him no choice in accompanying them to police headquarters to answer questions and kept him in a locked interview room for more than four hours. It is obvious that Cornewell's illegal arrest was merely an investigatory expedition used to gain information about Hall and the murders for which Hall was a suspect. Detective Beavers testified at the suppression hearing that he advised Cornewell he was not under arrest but was being taken to police headquarters for questioning. Tr. at 16. Further, Detective Tudor testified that his sole purpose in questioning Cornewell was to "find out what information he might have on [Hall]." Tr. at 26. Moreover, Detective Tudor went so far as to leave police headquarters, locate Ball, obtain her version of events, and present them to Cornewell. *See Brown*, 422 U.S. at 605 (where, in considering factor of purpose and flagrancy of misconduct, court noted that arrest was investigatory in both design and execution where detectives acknowledged that purpose of their action was for investigation and questioning).

Finally, Cornewell was not given any *Miranda* warnings until after he had implicated himself in the murders. Then, and only then, was he read his rights and asked to sign a waiver of those rights.

Therefore, balancing these factors, we conclude that Cornewell's decision to confess to his participation in the murders was the product of his illegal arrest and not an act of his free will. The more than four hours in a locked interview room while speaking to no one other than police officers, the absence of any intervening circumstances, the presence of evidence suggesting purposeful police misconduct, and the absence of the issuance of any *Miranda* warnings prior to Cornewell speaking with police at all, and especially prior to Cornewell implicating himself in the crimes, failed to purge his confession of its primary taint.

CONCLUSION

Based upon the foregoing discussion and authorities, we conclude that the trial court properly granted Cornewell's motion to suppress his statements.

Affirmed.

NAJAM, J., and MATHIAS, J., concur.